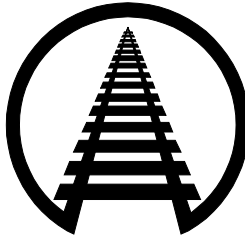


**STATEMENT OF**  
**EDWARD R. HAMBERGER**  
**PRESIDENT & CHIEF EXECUTIVE OFFICER**  
**ASSOCIATION OF AMERICAN RAILROADS**



**BEFORE THE**  
**U.S. HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
  
**HEARING ON TEA-21 REAUTHORIZATION**  
  
**MARCH 6, 2003**

On behalf of the members of the Association of American Railroads (AAR), thank you for this opportunity to discuss the reauthorization of the Transportation Equity Act for the 21st Century (TEA-21) as it relates to freight railroads. We view the TEA-21 reauthorization as an opportunity to build a platform for more public-private partnerships that boost our nation's economic competitiveness, provide major environmental benefits, and enhance our safety and security.

The growth and vitality of our nation have always been closely tied to transportation. Today, our transportation networks are, in aggregate, by far the best in the world, providing both a substantial competitive advantage for our farmers and manufacturers and a means to significantly improve the standard of living of our citizens.

Nevertheless, as Chairman Young remarked at a hearing of this committee in April 2001, "Anyone who drives, flies, or takes the train, and every business that ships freights over the highways, railroads, airways, or through our ports knows that our transportation system is overburdened and we have reached national gridlock." It is not too late to make the improvements we need to help ensure the efficient flow of people and freight well into the future, but we must act soon. I congratulate and thank members of this committee and others in Congress and the Administration for addressing this critical issue.

#### Freight Railroads Are a Vital Link

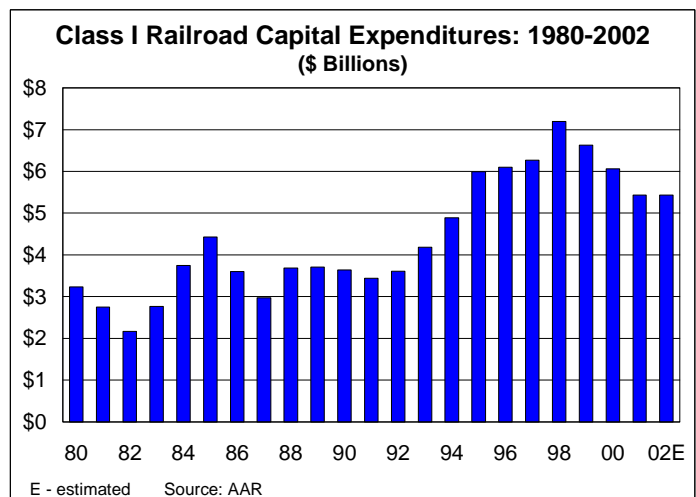
The U.S. freight railroad system is a tremendous national asset, serving nearly every agricultural, industrial, wholesale, retail, and resource-based sector of our economy. U.S. freight railroads move more freight, more efficiently, and at lower rates than any other freight rail system in the world.

In fact, the cost efficiency of freight rail means that U.S. consumers and businesses pay tens of billions of dollars less in transportation costs than they otherwise would. The American Association of State Highway and Transportation Officials

(AASHTO) recently estimated, in its January 2003 *Freight-Rail Bottom Line Report*, that if all freight rail traffic were shifted to trucks tomorrow, rail shippers would have to pay an additional \$69 billion per year — or \$1.4 trillion over the next 20 years — for less efficient transportation alternatives.

From 1980 to 2001, U.S. Class I freight rail volume (measured by ton-miles) grew 63 percent. Rail tons originated grew 17 percent over the same period. According to the U.S. Department of Transportation's (U.S. DOT) October 2002 *Freight Analysis Framework*, rail tonnage will increase more than 50 percent between now and 2020. Beyond serious capacity issues related to this traffic growth, rail customers will continue to insist that railroads invest heavily in service-enhancing infrastructure. Demands for use of freight-owned track by commuter and intercity passenger trains are mounting and will continue to grow. And with highways becoming increasingly congested and demands to reduce emissions, conserve fuel, and promote safety on the rise, pressure on railroads to provide relief will only increase.

Unlike other transportation modes, freight railroads finance their infrastructure spending with private funds. Largely as a result of approximately \$148 billion spent on infrastructure from 1980 through 2002 (and another \$160 billion spent on equipment), the Class I rail network is in better overall condition today than ever before. Moving forward, though, the high quality of the infrastructure must be maintained and necessary investments made to meet the capacity and service challenges that lie ahead.



By any measure of capital intensity, railroads are at or near the top among all U.S. industries. For example, from 1997 through 2001, U.S. freight railroads spent an average of 18.8 percent of revenue on capital investment. The comparable figure for the U.S. manufacturing sector as a whole? Just 3.8 percent.

Since enactment of the Staggers Rail Act of 1980, freight railroads have improved earnings, but as a group they still do not come close to earning their cost of capital. In 2001 (the most recent year available),

the rail industry's cost of capital (COC, as determined by the Surface Transportation Board) was 10.2 percent, compared with a return on investment (ROI) of 6.8 percent. While the gap between ROI and COC is not as wide as it used to be (see

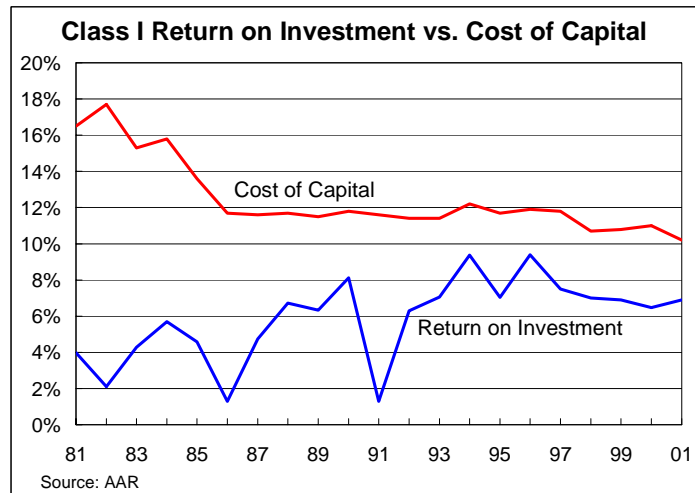


chart at right), its presence signifies railroads' continuing inability to earn adequate revenues in the face of intense competition in the freight transportation marketplace.

Because the rail industry's internal cash flow is not sufficient to meet its massive ongoing capital investment needs, railroads must access the outside capital markets.<sup>1</sup> However, rail stockholders and outside capital providers have become ever more concerned with the fact that railroads consistently fail to earn their cost of capital, and now increasingly insist that railroads demonstrate a compelling need for further investments.

<sup>1</sup> From 1981 to 2001, approximately 65 percent of Class I railroads' capital expenditures were provided from internally-generated funds and 35 percent from external capital providers. The "funds shortfall" over this period was nearly \$32 billion, highlighting the importance that access to outside capital has to the railroad industry.

As a result, especially over the past couple of years, railroads have become increasingly constrained in how much capital they can devote to infrastructure spending. Freight railroads have no shortage of potential infrastructure investment projects, but financial markets provide stern discipline to ensure that investments are made only where they will provide a reasonable promise of a direct economic benefit to the investing railroad. This discipline is necessary and appropriate in a market economy, but it discourages investments — including many potential railroad investments — that would yield significant public benefits, but only limited financial benefits to the railroad.

### Public Benefits of Rail

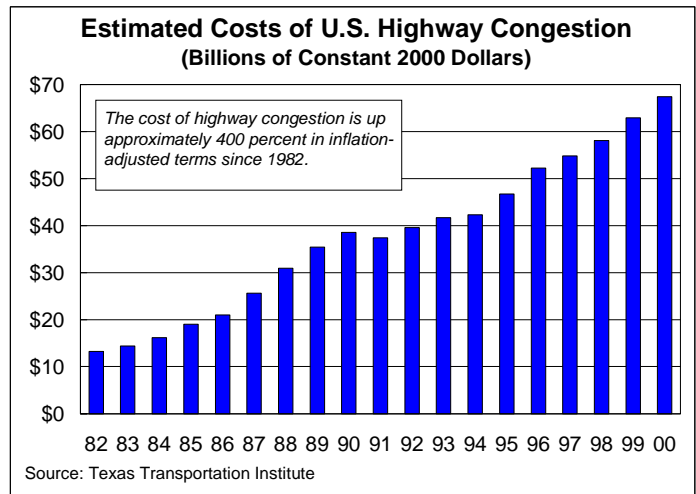
That increased investments in freight railroad projects would provide significant public benefits is beyond dispute.

For example, on average, railroads are three or more times more fuel efficient than trucks, and freight rail fuel efficiency has steadily improved. In 2001, railroads moved a ton of freight 403 miles, on average, per gallon of diesel (roughly equivalent to transporting one ton from Washington, DC to Boston on a single gallon), up from 235 miles in 1980 and 332 miles in 1990. In 2001 alone, U.S. freight railroads used 2.6 billion fewer gallons of diesel fuel and emitted 30 million fewer tons of carbon dioxide than they would have if their fuel efficiency had remained constant since 1980. And, we announced a couple of weeks ago that railroads are committed to doing their part to help achieve the 18 percent reduction in greenhouse gas emissions intensity by 2012 called for in the Administration's global climate change policy.

Further, the Environmental Protection Agency estimates that a typical truck emits roughly three times more nitrogen oxides and particulates for every ton-mile than a locomotive. Other studies suggest that trucks emit 6 to 12 times more pollutants per ton-mile than railroads. When new emission standards for newly manufactured and retrofitted locomotives are fully phased in by 2005, the standards will yield a 40 percent

reduction in hydrocarbon (HC) emissions, a 60 percent reduction in nitrogen oxide (NOx) emissions, and a 40 percent reduction in particulate emissions compared with estimated current rates.

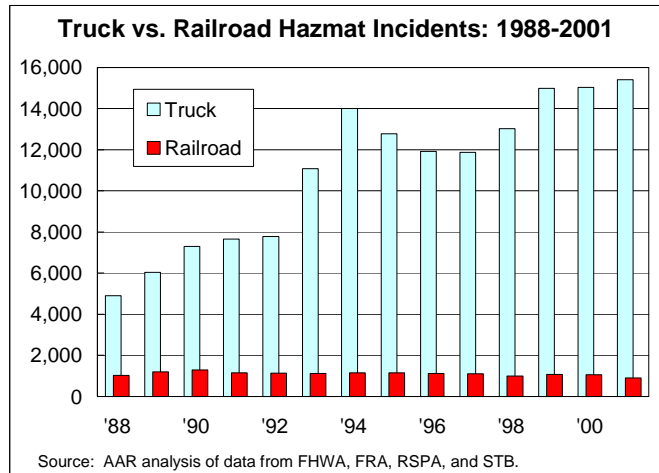
Freight railroads also significantly alleviate highway congestion. According to the Texas Transportation Institute's *2002 Urban Mobility Study*, the aggregate cost of highway traffic congestion in the United States is \$67.4 billion, representing the cost of 3.6 billion hours of extra travel time and 5.7 billion gallons of fuel wasted sitting in traffic. According to TTI, the level of congestion today is "undesirable" in 56 percent of urban areas studied, up from 7 percent in 1982 and 29 percent in 1990.



This highway congestion constitutes an "inefficiency tax" that all of us pay. An increased reliance on freight railroads can significantly lessen this burden, while reducing the pressure to build costly new highways. AASHTO recently estimated that if all rail freight were shifted to trucks, it could cost federal, state, and local transportation agencies an extra \$128 billion for highway improvements. A single intermodal train can take 280 trucks (equivalent to more than 1,100 cars) off our highways. Trains carrying other types of freight can take up to 500 trucks off our highways.

Finally, freight railroads provide major safety-related social benefits. Railroads today are one of our nation's safest industries: they have lower employee injury rates than other modes of transportation and most other major industry groups, including agriculture, construction, and manufacturing. Freight rail transportation is associated with an estimated one-fourth of the fatalities of intercity motor carriers per billion ton-

miles of freight moved. There is also a far greater chance of hazardous material release when such commodities are shipped by truck than by rail. Railroads and trucks carry roughly equal ton-mileage of hazardous materials, but trucks have 17 times more hazmat releases than railroads.



### Suggested Modifications to Surface Transportation Programs

It is in our nation's best interest to allow the major social benefits of freight rail to continue to accrue as quickly as possible. I respectfully suggest that one way we can help make sure this happens is by engaging in a more pronounced reliance on public-private financing partnerships for railroad infrastructure improvement projects, especially in cases where the fundamental purpose of the project is to provide public benefits or meet public needs. AASHTO is correct in its January 2003 *Freight Rail Bottom Line Report* when it noted, “[R]ealizing the public benefits of a strong freight-rail system at a national level will require a new partnership among the railroads, the states, and the federal government.”

This general concept extends also to short line railroads. Short line railroads perform a number of vital tasks, including connecting rural areas to the national rail network. However, the infrastructure of many of these smaller, lower density railroads cannot support the operation of the rapidly increasing number of heavier rail cars that railroads require to offer competitive, economical service to their customers. Absent Congressional funding, many of these companies will be unable to upgrade their lines — which may eventually face abandonment. If this happened, countless communities would

be cut off from the national rail network, resulting in severe economic displacement and a sharp increase in truck traffic on local roads.

To address these problems, the rail industry suggests that modest modifications be made to certain transportation infrastructure programs and federal fiscal policy. These modifications would provide an opportunity for transportation planners and providers to meet vital public transportation needs efficiently and effectively, while maintaining budgetary “firewalls” for transportation spending and preserving existing transportation funding frameworks.

Specifically, the freight rail industry suggests the following:

- 1. Preserve the Section 130 Grade Crossing Program and Clarify That Funds Can be Spent on Maintenance Activities**

Grade crossing warning devices are *highway* traffic control devices, there to protect motor vehicles, not trains. The Section 130 program directs funds for grade crossing protection, thereby enhancing highway safety.

The Section 130 program (named after a provision in an earlier federal highway bill) provides federal funds to states and local governments to eliminate or reduce hazards at highway-rail grade crossings on public highways. Current funding, under a set-aside to the Surface Transportation Program of TEA-21, is approximately \$155 million per year. The vast majority of Section 130 funds have been spent on the installation of new active warning devices such as lights and gates, upgrading existing devices, and replacing or improving grade crossing surfaces.

Despite the fact that accidents continue to occur at crossings with active warning devices, it is clear that at crossings with higher accident potential, an active warning device can improve safety. However, the high cost of current active warning devices — approximately \$150,000, on average, per installation — has limited the number of crossings at which they have been installed. Today, approximately 59 percent of the approximately 154,000 public highway-rail grade crossings do not have active warning

devices. Research into improved low-cost grade crossing warning systems is underway, but federal funding for highway-rail crossing hazard abatement through the existing Section 130 program would permit additional crossings to be protected with available warning devices much more quickly.

Without a set aside program, grade crossing needs would likely fare very poorly in competition with more traditional highway needs, such as highway capacity expansion and maintenance. In fact, the primary reason that a separate grade crossing safety improvement program was begun in 1974 was that highway safety, and especially crossing safety, received limited priority for available highway dollars.

Consistent with our view that the Section 130 program enhances highway safety, the rail industry supports H.R. 906 (the Surface Transportation Safety Act of 2003) recently introduced by Representatives Quinn and Rahall. H.R. 906 is a bill to improve highway safety. It is supported by major highway groups, including the American Highway Users Alliance and the Associated General Contractors of America. The bill would eliminate the existing “Optional Safety” category under the Surface Transportation Program and split funding equally between the Section 130 and Section 152 (highway hazard elimination) programs. The “Optional Safety” category has grown disproportionately since its establishment in 1998, thereby depriving the Section 130 and Section 152 programs of tens of millions of dollars set aside for safety improvements.

**2. Increase Funding for the Congestion Mitigation and Air Quality Improvement Program (CMAQ) and Strongly Encourage the Use of CMAQ Funds for Freight Projects**

CMAQ, currently funded at approximately \$1.5 billion per year, is intended to reduce transportation-related emissions by providing state transportation departments and local governments flexible options to fund emission reduction strategies. Because CMAQ funds are intended to improve air quality, funds must be spent in areas that do not

meet the National Ambient Air Quality Standards. (States without non-attainment areas may use their share of CMAQ funds for other projects.)

CMAQ funds are used to support a wide variety of purposes, including the use of public transportation; promoting efficient traffic movement; supporting educational campaigns; promoting ride-sharing, bicycling, and pedestrian programs; funding automobile inspection and maintenance programs and fleet conversion efforts; and for many other purposes.

Over the past few years, CMAQ has funded a few rail-related projects — for example, the construction of a truck-to-rail transfer facility in Waterville, Maine. Given the huge potential of freight-related projects to accomplish the goals of CMAQ, increased CMAQ funding and a greater focus on freight-related projects would allow states to undertake innovative projects to accomplish CMAQ's goals. Moreover, because some transportation planners question the eligibility of freight projects for CMAQ funds, there is a need for an explicit acknowledgement of freight eligibility for CMAQ-supported projects. This proposal is consistent with that of both the Freight Stakeholders Coalition (an organization comprised of diverse freight interests that work cooperatively to promote policies benefiting freight transportation — see Appendix A) and AASHTO.

### **3. Increase Funding for the Corridors and Borders Program and Liberalize Project Eligibility Criteria**

The National Corridor Planning & Development Program and the Coordinated Border Infrastructure Program collectively constitute the Corridors and Borders Program, which provides funding for planning, project development, construction, and operation of projects that serve border regions and for high priority corridors throughout the United States. Current funding is approximately \$140 million per year. Recently, applications for grants under the program have been 16 times higher than available funding, spotlighting the tremendous need for projects of this type.

Under TEA-21, a few small-scale rail projects have been funded by this program, including the development of multimodal/intermodal corridor plan for rail and highway improvements in Port Elizabeth, New Jersey, and technology and physical improvements for expediting rail cargo at border crossings in New York, Michigan, and Minnesota.

Rail participation in this program could be enhanced if it were made clear that projects geared to all international trade (East-West as well as NAFTA North-South) are eligible for program funding, and by changing project eligibility rules to allow funding of projects at facilities located more than 100 miles from an international border as long as the traffic served is largely international. Much U.S. rail traffic, including approximately half of rail intermodal traffic, is international, with most of it traveling hundreds of miles on its rail leg.

**4. Encourage Freight Planners to Give Freight Issues Additional Consideration in State and Local Transportation Planning**

Transportation projects that involve federal funds are prioritized by state planning organizations and, in the case of urban projects, by metropolitan planning organizations (MPOs). The planning process is very useful, allowing for continuing, cooperative efforts by local stakeholders to achieve effective transportation solutions. Unfortunately, transportation planning typically focuses almost exclusively on highway and transit projects, with scant attention paid to freight. To address this deficiency, Congress should strongly encourage planning organizations to consider freight transportation needs, including railroad projects and intermodal projects, more fully in their planning.

**5. Allow Funding of Rail Infrastructure Through Issuance of Tax-Exempt Indebtedness**

Under this proposal, holders of “Qualified Railroad Indebtedness (QRI)” would qualify for an income tax exclusion for interest earned on the QRI. QRI would be any type of indebtedness, regardless of the form, issued to fund the acquisition, construction, improvement, maintenance, or repair of “Qualified Railroad Property” (QRP). QRP, in

turn, would be an expenditure for the acquisition or maintenance of depreciable property, such as track, bridges, tunnels, grading, wharves and docks, terminal facilities, signals, computer systems, and public improvements either used or to be used in the railroad's trade or business.

This proposal is consistent with sound public policy, since, as discussed above, enhanced capital investment in critical railroad infrastructure leads to increased productivity, improvement in safety, enhanced global competitiveness, a reduction in environmental impact, and ultimately a higher standard of living for our nation. The tax benefits of this proposal would flow directly to the holders of the indebtedness in the form of income tax exclusion for interest earned, and indirectly to railroads in the form of lower capital costs. This proposal would encourage expanded use of efficient, environmentally-friendly rail transportation by partially counterbalancing the substantial public subsidies provided to rail-competitive heavy trucks and barges.

**6. Provide Tax Incentives and Tax Exempt Financing to Companies Making Investments in Intermodal Freight Infrastructure**

This proposal would provide targeted income tax benefits to companies for investments made in qualifying assets to improve the efficiency or increase the capacity of the national intermodal freight transportation system. Qualifying assets would include track and roadbed located on intermodal corridors, intermodal transfer facilities, freight handling machinery and equipment at intermodal transfer facilities, and intermodal information infrastructure. Under this proposal, the tax benefits would accrue to any company that made such investments, not just railroads. Enactment of this proposal would maintain and extend TEA-21's recognition of and focus on intermodal solutions to transportation problems.

As explained by the National Commission on Intermodal Transportation (a Congressionally established blue-ribbon panel assigned to study intermodal transport), the public benefits of an efficient intermodal transportation system are "enormous."

According to the Commission, intermodalism lowers overall transportation costs by allowing each mode to be used for the portion of the trip to which it is best suited; increases economic productivity and efficiency, thereby enhancing the nation's global competitiveness; reduces congestion and the burden on overstressed public infrastructure components; generates higher returns from public and private infrastructure investments; and reduces energy consumption and contributes to improved air quality and environmental protection.

**7. Expand the Railroad Rehabilitation and Improvement Financing (RRIF) Program and Remove Restrictive Requirements**

The Railroad Rehabilitation and Improvement Financing (RRIF) program provides low-interest loans and loan guarantees (not direct federal grants) to help finance railroad capital investments. As authorized by TEA-21, RRIF authorizes up to \$3.5 billion in direct loans and loan guarantees, of which at least \$1 billion is reserved for small railroad projects. It is administered by the Federal Railroad Administration. Due largely to an exceedingly long delay in the release of implementing regulations and overly restrictive regulatory requirements, to date just a few RRIF loans have been approved.

A major expansion of the RRIF program and an easing of regulatory barriers to its use could help both short line and Class I railroads to continue to provide safe and efficient transportation service that enhances our nation's economic health and global competitiveness. Two proposals — S. 104 (the "Railroad Advancement and Infrastructure Law of the 21st Century," or "RAIL-21") in the current Congress, and H.R. 2950 (the "Rail Infrastructure Development and Expansion Act for the 21st Century," or "RIDE-21") in the 107<sup>th</sup> Congress — would increase (from \$3.5 billion to \$35 billion) the amount of loans and loan guarantees available through the RRIF program, and would raise the amount dedicated to short line railroads from \$1 billion to \$7 billion. Both proposals also countermand the existing regulatory barriers pertaining to RRIF program

eligibility, particularly the lender of last resort provisions and the collateral requirements. Eliminating these excessive regulatory requirements would make the RRIF program more attractive to railroads of all sizes.

### Freight Stakeholders Coalition

As planning for the reauthorization of TEA-21 proceeds apace, the AAR is pleased to be an active participant in the Freight Stakeholders Coalition.<sup>2</sup> The Coalition has unified behind a nine-point agenda designed to promote sound, effective transportation solutions. There is substantial overlap between the Coalition's nine points and the seven AAR proposals discussed above. In addition to those areas of overlap, the AAR supports other elements of the Coalition's agenda, including protecting the integrity of the Highway Trust Fund; dedicating funds for National Highway System (NHS) highway connectors to intermodal freight facilities; establishing a national freight industry advisory group to provide input to the U.S. DOT; creating and funding a Freight Cooperative Research Program; expanding freight planning expertise at the state and local levels; developing ways to increase available funds without new user fees and taxes by creating a toolbox of innovative financing options specifically aimed at freight capacity improvements and enhancements; and streamlining environmental permitting for freight transportation projects. More details on the Coalition's points are in Appendix A.

### Conclusion

Over the next two decades, a rapid increase in our nation's freight traffic will stretch already constrained transportation infrastructure. Meeting this challenge — while minimizing congestion and emissions and maximizing safety and energy efficiency — is a critical and difficult task. If not done effectively, it will weigh heavily on our nation's productivity and quality of life. Enhanced freight rail transportation must be part of the

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<sup>2</sup> Besides the AAR, members of the Coalition include the American Association of Port Authorities, the American Trucking Associations, the Coalition for America's Gateways and Trade Corridors, the Intermodal Association of North America, the National Association of Manufacturers, the National Industrial Transportation League, the U.S. Chamber of Commerce, and the World Shipping Council.

solution. While railroads have made tremendous strides in improving their ability to serve their customers efficiently and reliably, the challenges of operating a rail system capable of meeting future needs is daunting and will require the benefit of effective public policy. Freight railroads look forward to working with this committee, others in Congress, and other appropriate parties to develop a surface transportation reauthorization which best meets this country's transportation needs.

## APPENDIX A

### **FREIGHT STAKEHOLDERS COALITION TEA-21 REAUTHORIZATION AGENDA**

**1. Protect the integrity of the Highway Trust Fund.**

Reauthorize the firewalls provided for in TEA-21 to ensure that the funds collected are used for their dedicated purpose and not for deficit reduction.

**2. Dedicate funds for NHS highway connectors to intermodal freight facilities.**

The NHS Intermodal Freight Connectors report that was sent to Congress documents the fact that these road segments are in worse condition and receive less funding than other NHS routes. Targeted investment in these “last mile” segments would reap significant economic benefits compared to the associated costs.

**3. Form a national freight industry advisory group pursuant to the Federal Advisory Committee Act to provide industry input to USDOT.**

The advisory group should be funded and staffed, and it should consist of freight transportation providers from all modes as well as shippers and state and local planning organizations. Despite the best efforts of the agency to function as “One DOT,” there is still not enough of a focused voice for freight. An Advisory Group would meet the need for regular and professional interaction between USDOT and the diverse freight industry, and could help identify critical freight bottlenecks in the national freight transportation system.

**4. Create a Freight Cooperative Research Program.**

Increasingly, industry issues are public issues that would benefit from a dedicated, funded research effort led by an industry-based steering/oversight group, such as the one described above, to ensure useful research results to benefit the freight transportation system as a whole. One option would be to dedicate a portion of the State Planning and Research (SP&R) dollars to freight issues. Freight data issues would fall under this program as well.

**5. Expand freight planning expertise at the state and local levels.**

Given the importance of freight mobility to the national economy, states and MPOs should be provided additional funds for expert staff positions dedicated to freight issues (commensurate to the volumes of freight moving in and through their areas).

**6. Develop ways to increase available funds without new user fees and taxes by creating a toolbox of innovative financing options specifically aimed at freight capacity improvements and enhancements.**

Options could include (1) lowering of the threshold for TIFIA funding eligibility; (2) development of tax incentives; and (3) expansion of the state infrastructure banks (SIBs).

**7. Significantly increase funds for an expanded corridor/border and gateway program.**

This would build on the highly popular but under-funded “Corridors and Borders Program” (Sections 1118 and 1119), but adds the important concept of gateways. The funding should be freight specific, and there should be a qualification threshold (based on volumes) so that dollars get directed at high volume corridors/borders/gateways rather than wish-list projects.

**8. Streamline environmental permitting for freight projects.**

Multiple and often duplicative federal laws and regulations delay environmental review of transportation projects. Language in TEA-21 directing federal agencies to streamline the review process for highway projects has not been effective and other measures to simplify the review process for all freight projects should be considered.

**9. Increase funding and promote use of the Congestion Mitigation and Air Quality Improvement Program for freight projects that reduce congestion and improve air quality.**

CMAQ was designed to fund projects that will help reduce transportation-related emissions. Although CMAQ has supported some freight projects, it has been used primarily to address passenger needs. CMAQ funding should be dedicated to projects that can be shown to reduce congestion or improve air quality. Total funding for CMAQ should be increased and the use of CMAQ funds for freight projects should be clarified and strongly encouraged.